

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1191

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

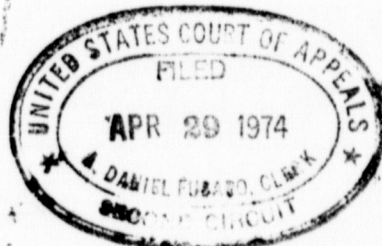
JOHN BROWN,

Appellant.

B
P/S
Docket No. 74-1191

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
606 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

E. THOMAS BOYLE,
Of Counsel

PAGINATION AS IN ORIGINAL COPY

TITLE OF CASE

THE UNITED STATES

U.S.

JOHN BROWN aka

"One Eye John"

ATTORNEYS

For U.S.:

Asst Francis Sheerin

For Defendant:

Did possess firearms

DATE	PROCEEDINGS
12-73	Before Bartels J - Indictment filed
-19-73	Magistrate's file 73 M 194 inserted into CR file.
9/73	Before JUDD, J.- Case called- Deft BROWN and counsel present-Deft arraigned and enters a plea of not guilty-Deft released to state authorities on state charges-Case adjd to 7/9/73 for trial.
24-73	Stenographers transcript dated 4-19-73 filed.
9/73	Before JUDD, J.- Case called- Deft BROWN and counsel present-Marked ready and passed to 7/10/73 for trial.
6/10/73	Before JUDD, J.- Case called- X Adjd to 7/20/73 at 12:00 noon for hearing on motion to suppress
/11/73	Notice of Motion filed, re: 7/20/73 re: to controvert search warrant and XXXXX suppress any and all property seized

73 02 380

DATE	PROCEEDINGS
7/20/73	Before JUDD, J.- Case called- Adjd to 8/30/73 at 2:00 P.M.
7-24-73	Voucher for Expert Services filed.
8/30/73	Before JUDD, J.- Case called- Deft and counsel present-Suppression begun- Hearing concluded-Deft's motion to suppress denied-Govt's motion for increase in bail-Bail set at \$10,000.00 Surety Bond-Case adjd to 10/15/73 for trial.
9-12-73	Voucher for Expert Services filed
10/15/73	Before JUDD, J.- Case called and adjd to 10/17/73
10-17-73	Before JUDD, J - Case called - deft & counsel M.Seltzer of Legal Aid present - marked ready and passed to Oct. 18, 1973.
10/18/73	Before DOOLING, J.- Case called- Deft present- Pro se aided by Marion of L.A.S.- Deft moves for an adjournment to 10/23/73- Motion granted
10-23-73	By DOOLING J - Consent Order filed waiving Trial by Jury.
10-23-73	Before DOOLING J - Case called - deft present pro se - Marion Seltzer of Legal Aid present - trial orderdd and BEGUN - Govts opening - Deft reserves right to opening statement - trial continued to Oct. 24, 1973
10-24-73	Before DOOLING J - Case called - deft present pro se - counsel present trial resumed - Govt rests - Government moves to reopen its case - motion granted - Govt rests - defts moves for Judgment of Acquittal - motion denied - trial contd to Oct. 25, 1973.
10/25/73	Before DOOLING, J.- Case called- Deft present - Pro se M. Seltzer of Legal Aid present- Trial resumed - Both sides rest- Trial concluded- Decision on Special findings and general findings filed- Deft renews motion for Judgment of acquittal- Deft is found guilty as charged- Sentence adjd without fee
10/25/73	By DOOLING, J.- Special findings and Genral Findings filed finding Deft guilty as charged
2-8-74	Before DOOLING J - case called - deft & counsel Marion Seltzer of Legal Aid present - deft sentenced to imprisonment for a period of 5 years pursuant to 18:3651 - deft to serve in a jail type institution for xxxx 6 months and execution of the remainder of the sentence. Sentence is 4½ years, is suspended and the deft is placed on probation for 5 years. Deft advised of his right to appeal. Clerk to file Notice of Appeal forthwith xxxx without fee on behalf of the deft.
2-8-74	Notice of Appeal fildd without fee.
2-8-74	Docket entries and duplicate of Notice of Appeal mailed to C of A
2-11-74	Certified copy of Judgment and Commitment and Order of Probation and Deft delivered to Federal Detention Headquarters

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

FJS:mb
31,231

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APR 12 1973

☆

TIME A.M.

P.M.

UNITED STATES OF AMERICA

INDICTMENT

-against-

Cr. No.

26 U.S.C. §5861(d)

JOHN BROWN, also known as
"One Eye John",

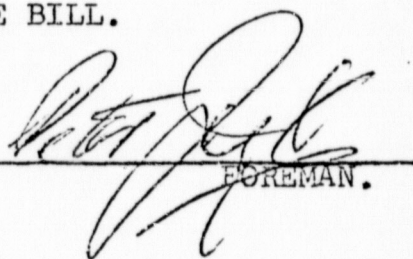
Defendant.

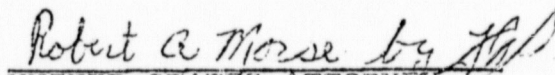
73 CR 380

THE GRAND JURY CHARGES:

On or about the 8th day of February 1973, within the Eastern District of New York, the defendant JOHN BROWN, also known as "One Eye John", knowingly did possess a firearm as defined by Title 26, United States Code §5845(a)(1), that is, a J. C. Higgins short barrel shotgun, Model 14, 12 gauge, which had not been registered to him in the National Firearms Registration and Transfer Record, as required by Section 5841, Title 26 United States Code. (Title 26, United States Code, Section 5861(d).)

A TRUE BILL.


FOREMAN.


UNITED STATES ATTORNEY
Eastern District of New York

Criminal Court of the City of New York

Silvia J. Cannon
Court Clerk Part AR 1, County of KINGS
Clerk of the Court

State of New York } ss.:
County of

Ptla William M. Cannon Jr. Sh# 24996 Narc. Dist. # 12 O.C.C.B.

being duly sworn, deposes and says:

1. I am a police officer assigned to narcotics district # 12 O.C.C.B.
2. I have information based upon Information and investigation of Organized Crime Control Bureau Complaint # 3-884. Investigation and personnel observation of the above mentioned Patrolman reveals the following:
On Feb. 1, 1973 during the hours of 2245 to 2335 observed two males enter 560 Osborn Ave and go to the ground floor rear apt. remain there for a period of (3) three minutes and then exit. Then one female enter remain (3) minutes and then exit. At 2327 hrs. one male enters and is a known drug addict. On Feb 2, 1973 during the hours of 1535 to 1600 I observed (5) five males enter and exit all at different times. Also one female did enter and proceed to the rear apt. knock and enter (2) two minutes later she exited. This female is an addict from Feb. 1, 1973.
On Feb. 1, 1973 one male was arrested at 2335 Hrs. and stated after being advised of his rights that one, JD "ONE EYE JOHN" did sell him a quantity of heroin and did show him one 38 Cal. revolver and one sawed off shotgun. Through the officers investigation it was learned that JD ONE EYE JOHN is in fact one known to this department under B# 824576 one John Brown and is wanted under warrent # 12715, Supreme Court Docket # 7257/72

Observation of said premises indicates that drug users and sellers are frequenting asis premises. I have been a police officer the past seven years, I have given testimony with respect to narcotics cases and I am of the opinion that said premise if being used to process narcotics. It is requested that this warrent be endorsed in accordance with "NO KNOCK" provisions, because of the easily disposable nature of the contraband.

the deponet further states that through his ~~investigation~~ investigation one known as John Brown has possession and control of aforementioned apt. and that the drugs were sold and possed in said apt. He further states that the 38 Cal. revolver was in his possession while in the apt.

C-2

3. Based upon the foregoing reliable information and upon my personal knowledge there is probable cause to believe that such property Namely narcotic and dangerous drugs, firearms

and may be found in the possession of John Brown M/N/40/5'10" 170 lbs med. build dark skinned

or at premises 560 Osborn Ave Brooklyn NY Ground Floor Rear

WHEREFORE, I respectfully request that the court issue a warrant and order of seizure, in the form annexed, authorizing the search of John Brown and others

and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

No previous application in this matter has been made in this or any other court or to any other judge, justice or magistrate.

Sworn to before me

2/6, 1973

Nicholas C. [Signature]
Judge

William M. Cannon Jr. 24996 Ptl. 12 ND OCC
Police Officer Shield Rank Comm

[Signature] 24996 [Signature] 12 ND OCC

Inventory and Affidavit of Property Taken Under Search Warrant
(C.C.P.—§ 805, 806)

Criminal Court of the City of New York

Part 1A, County of KingsSTATE OF NEW YORK }
COUNTY OF Kings } ss.:

Inventory made publicly of property taken by the undersigned, under and pursuant to the annexed warrant:

- 1- 4 white METAL Spoons
- 2- 1/8 oz + 16 grams MARIJUANA
- 3- 25- SYRINGES- FUNCTIONAL
- 4- 1- glassine - non narcotic
- 5- 1- Bell D-20
- 6- 1- J.C. Higgins Shotgun, Model 14, 12 ga, 8 1/2" barrel,
SERIAL 553,1480

JUL - 9 1973

I certify that the within is a true
New York
Court of the City of New York
Court Clerk
Sidney Bassin
Clerk of the Court

C-4

I, Police Officer William M Cannon; the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

William M Cannon 24996 P.O. 12th P.D.
Name Shield Rank Command

Sworn to before me,
MAY 14 1973 19

[Signature]
Judge.
MIRANDA FLORES

Search Warrant
Sec. 707 C.C.P.

Criminal Court of the City of New York

NICHOLAS COFFINAS

Part AR 1, County of KINGS

FEB 6 1973

In the name of the People of the State of New York:

To any peace officer in the City of New York.

Proof by affidavit (or deposition) having been made this day before me by
Ptl. William M. Cannon Jr. Sh# 24996, Narcotic District # 12
O.C.C.B.

that there is probable cause for believing that certain property namely narcotics in violation
of PL 220.15 of the New York State Penal Law. Also possession of deadly
weapons, one 38 Cal. Revolver and one sawedoff Shotgun under PL 265.05

191 - 9 1973

I hereby certify that the within is a true
Copy of the Record on file in this Court
New York 191 - 9 1973

Court Clerk Sidney Bassin
Clerk of the Court

You are therefore commanded, between 6:00 A.M. and 9:00 P.M. or at any hour of the day or
night without giving prior notice or authority because of the easily
disposable nature of the contraband.

to make an immediate search of 560 Osborn Ave Brooklyn N.Y. ground floor rear apt.

C-6

occupied by "ONE EYE JOHN" John Brown Male Negro 40 years 5'10" in height medium build dark skinned and must. Known to this department under B# 824576 and is wanted under Supreme Court Warrent # 12715 case # 7257/72

and of the person of person described above.

and of any other person who may be found to have such property in his possession or under his control or to whom such property may have been delivered, for namely Narcotics and Dangerous Drugs, implement and other paraphenalia commonly used in the violation of 220 Section of the New York State Penal Law, Dangerous weapons in violation of Section 265.05 of the New York State Penal Law.

and if you find any such property or any part thereof to bring it before me at Part

at

Street, New York City.

Dated at New York City,

2/6, 1973
4 32



Richard G. [Signature]
Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

JOHN BROWN,

Defendant.

73 CR 380
: SPECIAL FINDINGS
and
: GENERAL FINDING

-----X
Appearances:

FRANCIS J. SHEERIN, Esq., (ROBERT A. MORSE, Esq.
United States Attorney, of Counsel)

FILED

OCT 25 1973

11:11 AM
P.M.

ED. N.Y. JOHN BROWN, pro se. (Ms. MARION SELTZER, Federal
★ Defenders Unit, Legal Aid Society, held herself
available at the defense counsel table with Mr.
Brown throughout the trial to advise with him
when he asked her to do so.)

DOOLING, D. J.

Defendant was charged with knowingly possessing on
February 8, 1973, a firearm, as defined in Internal Revenue
Code § 5845(a)(1), that is a J. C. Higgins short barrel
shotgun, Model 14, 12 gauge, which had not been registered
to him in the National Firearms Registration and Transfer
Record, as required by Internal Revenue Code § 5841.

For some days before February 8, 1973, Patrolman
William M. Cannon, Jr., and one or more other members of
the New York City Police Department had under surveillance
the ground floor rear apartment at 560 Osborn Avenue,
Brooklyn, New York, and their surveillance extended to the

activities of defendant in connection with the apartment. They had observed defendant enter the apartment two or three times before February 1, 1973, and had seen him let himself into the apartment with a key. On February 1, 1973, observing a man, later identified as Jerry Johnson, enter the apartment building, go to the ground floor rear apartment, knock, engage defendant at the door of the apartment in conversation at about 11:00 or 11:30 P.M., and then leave the apartment door and go out of the building. Patrolman Cannon and his colleague followed and arrested Johnson. They persuaded Johnson to give them information about defendant and the contents of the apartment, and, on the basis of that information and their observations, obtained a no-knock search warrant in the Criminal Court on February 6, 1973, which recited probable cause to believe that a sawed-off shotgun was in the premises and authorized a search for and seizure of (inter alia) the sawed-off shotgun.

On February 8, 1973, Patrolman Cannon and other members of the Police Department executed the warrant, kicking the door open to gain entrance. Cannon advised

3.
defendant that he was under arrest and asked him where the shotgun was. Defendant asked, "What shotgun?" Cannon said he did not want anyone hurt, that he knew where the shotgun was, and was going to get it. Defendant then told Cannon that it was in the bedroom under the bed. Cannon went to the indicated place, the gun was there, and he took possession of it.

The Government showed an unbroken chain of custody from Cannon to the Precinct operations officer, Lieutenant Wieber, to Tyranski, the pick-up messenger from the ballistics laboratory, to Yarnell, the ballistics laboratory intake representative at the time in question, to Detective Frank ~~Giugliano~~ Li ano (a ballistics expert: his tests showed that the shotgun was operable, that it was 21 inches in overall length and had an 8 1/2 inch barrel), who sealed the gun and his report on it in a heavy two element plastic bag, to Hodges of the ballistics laboratory, to the Police Department Property Clerk (Brooklyn Borough Office), to Special Agent Dugan, to the Assistant United States Attorney, to the Courtroom, where Cannon, on the witness stand, opened the plastic bag, removed the shotgun and identified it as the one he had seized in the apartment on February 8, 1973,

4.
and on which he had on that night scratched his initials.

The apartment in which the gun was seized was not defendant's but the tenant was and had been away a longish time and defendant was living in it and making rent payments on it. His clothing was in it. On the night of the arrest he was in his underclothing and a bathrobe and Cannon got his outerwear for him from the bedroom and hall closet before defendant left the apartment, under arrest, for the precinct.

Jerry Johnson testified that he had been in the apartment on four or five occasions and had seen defendant in it, shirtless and wearing a robe. He saw defendant alone in the apartment and on one or more visits saw another man there. Whenever Johnson was at the apartment he found defendant there. He saw defendant in the apartment on one occasion sitting in the living room with a shotgun, and he asked defendant whose gun it was. Defendant said that it was his, that he'd been robbed and that it was not going to happen again. Johnson described the gun as one with a sawed off barrel, the stock sawed down and taped and with white "string" on the stock end of it. (As produced in court the shotgun had what appeared to be

5.
white insulated wire wound round the wood part at the throat of the stock, the surplus wire folded into a bunch.)

Johnson, after his arrest, came to an understanding with the police that if he helped them they would "let him off." He did help, his help leading to/warrant, seizure and arrest, and he was given six months probation on his state charge. Johnson's first interview with the Assistant United States Attorney took place after Johnson had been put on probation. Obviously Johnson had an incentive to proceed as he did in implicating defendant, but taking that into account, his testimony is accepted as true in essentials and materially corroborated by Cannon's testimony and the result of the search. Johnson also testified to seeing defendant in possession of a .38 calibre revolver and none was found in the search of February 8, 1973.

Upon all the evidence it is concluded that on February 8, 1973, defendant was in possession of the shotgun described in the indictment; he had that possession in the rear ground floor apartment at 560 Osborn Avenue, Brooklyn, New York, on and before that date. The shotgun in evidence as Exhibit 2 is that shotgun.

The shotgun is a firearm (as defined in Internal

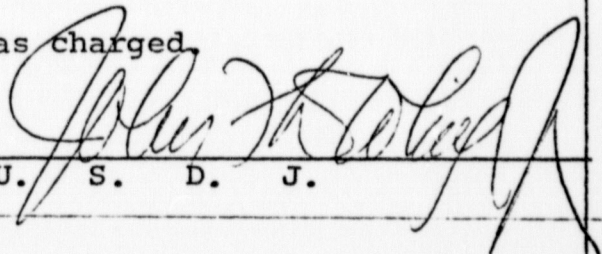
Revenue Code § 5845(a)(1)): it is a shotgun as experts define shotgun: a smooth-bore firearm; the barrel length of the shotgun, measured from the muzzle to the face of the bolt (26 C.F.R. § 179.11) is less than 18 inches, and is, as measured in the courtroom by the Government's expert, 8 2/3 inches; the shotgun was demonstrated in the courtroom by the Government's expert to be functional; the New York City Police Department ballistics expert testified that he test-fired the shotgun at the Police Laboratory on February 12, 1973, and found it operable; he so reported under date of February 12, 1973 (Exhibit 8).

The shotgun, it was shown by certificate of the Acting Chief, Technical Services Division, for the Secretary of the Treasury, and the certificate of Firearms Enforcement Officer, was not registered to defendant in the National Firearms Registration and Transfer Record, nor was there evidence of record that it had been acquired by defendant through unlawful making, transfer, or importation.

GENERAL FINDING

Defendant is guilty as charged
Brooklyn, New York
October 25, 1973.

U. S. D. J.



Certificate of Service

April 29, 1974

I certify that a copy of this brief and appendix has been mailed to the Acting United States Attorney for the Eastern District of New York.

E. Thomas Bayle

